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10/564,979	01/18/2006	Michihito Kumayama	1916.1001	5431

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STAAS & HALSEY LLP  
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1201 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005

EXAMINER
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RADA, RINALDI I

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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06/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/564,979

Applicant(s)

KUMAYAMA, MICHIIHITO

Examiner

Candace Brakewood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/18/2006.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-5, in the reply filed on January 12, 2007 is acknowledged.
2. Claims 6-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 12, 2007.

### ***Priority***

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

4. Figure 17 and Figure 18 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).
5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the upper and lower dead centers of the vertical slit must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

7. Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The language should be clear and concise and should not repeat information given in the title. It should avoid

using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

8. The abstract of the disclosure is objected to because it is more than 150 words. Correction is required. See MPEP § 608.01(b).

9. The disclosure is objected to because of the following informalities: there are many lengthy sentences in claim format, which make the disclosure difficult to understand. Appropriate correction is required.

#### ***Claim Objections***

10. Claim 3 is objected to because of the following informalities: the phrase "having a structure in which both lower end of the bent staple", as found in paragraph 3, is grammatically incorrect. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claim 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the mount shaft portion" in the second paragraph. There is insufficient antecedent basis for this limitation in the claim. It should be noted that this reference has been interpreted as referring to the mount shaft member.

Claim 1 recites the limitation "the horizontal base surface" in paragraph 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said staple mount magazine has a magazine upper dead center so as to be rotatable in a range below the magazine upper dead center through the mount shaft portion". Based upon the explanation of the upper dead center found on page 28 of the disclosure, it is unclear how the staple mount magazine would be rotatable below (toward the base) this point, as the magazine would contact the base.

Claim 1 also recites the limitation "staple striking blade plate vertical slit having upper and lower dead centers". It is unclear how the slit can have upper and lower dead centers, as the term dead center usually implies either one, exact center, or is used with regards to a rotational movement.

Claim 3 recites the limitation "the horizontal base surface" in paragraph 2. There is insufficient antecedent basis for this limitation in the claim.

Also in claim 3, the phrase "in a range from a front end to a rear end of the staple" in paragraph 3 is unclear; in particular, it appears that the word "staple" should be --stapler--.

Claim 3 recites the limitation "released the engagement" in paragraph 7. This is unclear, particularly with reference to the antecedent basis of the engagement and/or the past tense of the verb release.

Claim 3 recites the limitation "the other end direction" in paragraph 9. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Polzer (1,962,874). Polzer ('874) discloses a stapler (Fig. 1) having a horizontal base (16), an operation handle (44), a staple striking blade plate (38), and a staple mount magazine (24) in which a number of connected staples (28) are mounted. Polzer ('784) further discloses a pivot shaft member (26, 45) for coupling the base, handle and staple mount magazine. The pivot shaft member includes an operation shaft member (45) that connects the base (16) and the handle (via the supports, 22), as well as a mount shaft member (26) that connects the base (16) and the staple mount magazine (24).

The staple mount magazine (24) inherently has an upper dead center, and depending on the orientation of the stapler (upright, upside down, etc.), it is deemed capable of rotating below this point.

Polzer ('874) further discloses a staple striking blade plate vertical slit (39) in the staple mount magazine (24), and due to the indefinite nature of the terms "upper and lower dead centers", the slit (39) is deemed to have an upper dead center (a center point of the upper half of the slit) and a lower dead center (a center point of the lower half of the slit).

The staple striking blade plate (38) has an upper portion connected to the operation handle (44, Fig. 1) and is disposed between the operation handle (44) and base (16), as can be seen in Fig. 1. The blade plate (38) is vertically movable in the staple striking blade plate vertical slit (39), and the lower end of the blade plate (38) lowers as the operation handle (44) is pushed downward (page 2, lines 39-54) toward the horizontal base.

With regards to claim 2, the horizontal base (16) includes a shaft support means (22) that extends above the staple mount magazine (24) and is engaged with the operation shaft member (45), which is connected to the operation handle (44).

### ***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebihara (4,784,307) in view of Polzer (1,962,874).

Ebihara ('307) discloses the invention substantially as claimed, including a stapler having a horizontal base (10), an operation handle (16), a staple striking blade plate (undesignated – the blade across from the reference numeral 26A in Fig. 1) and a staple mount magazine (14) with a connected staple assembly cassette (26) having a case body (Fig. 6 and Fig. 7) in which a connected staple assembly of a number of



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staples are disposed (column 3, lines 25-31). The base (10), handle (16) and staple mount magazine (14) are coupled by means of a pivot shaft member (20).

The staple striking blade plate has an upper portion connected to the handle (16), as can be seen in Fig. 1, is disposed between the handle (16) and the base (Fig. 1), is vertically movable in association with the handle, and has a vertical width that extends toward the horizontal base.

The staple mount magazine has a case (14), a feed mechanism (column 3, lines 32-35), and serves to hold the connected staple assembly.

It is understood from the disclosure that the staples have a substantially U-shape (as normal staples do) with a right angled corner portion and the lower ends of which are directed toward the horizontal base.

The staple mount magazine has two end sides: a front end portion and a rear end portion. The connected staple assembly is mounted at the rear end.

The feed mechanism includes a mount sensor (42), a pusher piece (30), a pusher piece engaging member (38A), and a pusher piece traction spring (column 3, lines 32-35). The mount sensor (42) is displaced and deformed when it senses the presence/absence of the connected staple assembly.

The pusher piece engaging member (38A) engages the pusher piece (via the walls of the cassette). Due to the indefinite nature of the phrase "released the engagement", the pusher piece engaging member (38A), is deemed to sufficiently meet this limitation, because when the mount sensor (42) is displaced, the engagement

between the mount sensor (42) and pusher piece engaging member is released, which allows the cassette to be removed and the pusher piece to be released.

The pusher traction spring (column 3, lines 32-35) pulls/pushes the pusher piece (30), and the pusher piece (30) moves from one end side of the staple mount magazine (14) to the other end side through an advance passage (24). The pusher piece (30) is subjected to elastic traction forces during the stapling process. It should be noted that even when the mount sensor (42) is disengaged from the pusher piece engaging member (38A), the pusher piece (30) is deemed capable of advancing forward (in the case that the user has not yet removed the cassette from the stapler). It should also be noted that the rear side of the connected stapler assembly is elastically pressed by the spring in a direction of the mount case.

Regarding claims 4 and 5, the rear end sensing sensor (42), which commonly serves as the mount sensor, is deformed and displaced when the rear end of the connected staple assembly is inserted. The pusher piece engaging member (38A) is deemed to have a releasing means (the tip of the sensor, 42A), because depending on the position of the sensor (42), the pusher piece (30) can be released from the pusher piece engaging member (38A). For example, when the sensor (42) is displaced downwardly, the releasing means (42A) disengages the pusher piece engaging member (38A), and the cassette can be removed from the stapler, and therefore, the pusher piece (30) can be released.

Ebihara ('307) fails to disclose the staple mount magazine (14) having a staple lowering slit and opening at its front end portion, at which the front end of the connected

staple assembly is mounted. Attention is directed to Polzer ('784), who teaches the use of a staple mount magazine extending along the entirety of the stapler, where the connected staple assembly is mounted at the front end portion, and the staple mount magazine has a staple lowering slit/opening. As is well known in the art, this configuration provides more stability/support to the connected staple assembly. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to extend the staple mount magazine so that the connected staple assembly is mounted at the front end portion with the staple lowering slit to provide added stability/support to the stapler.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tsai (6,942,136), Jairam et al. (2003/0155400), Jairam et al. (2003/0155399), Beecroft (2,632,889), Ebihara (4,763,824), Goodstein (2,501,564) and Kikuchi et al. (5,758,813) are cited to show related inventions.

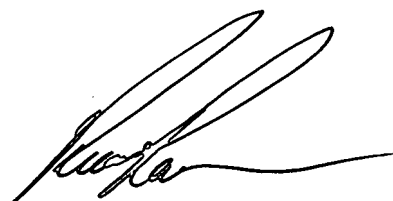
18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candace Brakewood whose telephone number is 571-272-3115. The examiner can normally be reached on Monday-Thursday, 7am-5:30pm.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CEB  
Candace Elizabeth Brakewood  
Examiner  
Art Unit 3721  
February 1, 2007

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal flourish extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700